

HOUSE BILL 3945

By Lynn

AN ACT to amend Tennessee Code Annotated, Title 8,  
Chapter 44, relative to public meetings.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-44-101, is amended by deleting subsection (a) and substituting instead the following:

(a) Because openness in government supports and enhances public confidence, discourages abuse, and allows citizens to participate equally in decisions affecting their lives, the general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

SECTION 2. Tennessee Code Annotated, Section 8-44-102, is amended by deleting subsection (a) and substituting instead the following:

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by state law and the Constitution of Tennessee.

SECTION 3. Tennessee Code Annotated, Section 8-44-102(b), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) "Meeting" means the convening of members of a governing body of a public body in order to make a decision or to deliberate toward a decision on any matter within the jurisdiction of that governing body.

SECTION 4. Tennessee Code Annotated, Section 8-44-102, is amended by deleting subsection (c) in its entirety and substituting instead the following:

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. "Meeting"

does not include any on-site inspection of any project or program, the mere communication of factual information from one member to another where the purpose is to educate a member on a specific issue, nor does it mean two (2) or more members cannot attend the same community event, education workshop, seminar or meeting of a statewide or regional organization of government officials.

(d) No such chance meeting, informal assemblages, simultaneous or electronic communication or series of same shall be used to decide public business, to seek comment or response on a pending matter or to debate public business with intent to announce a decision later in a public meeting in circumvention of the spirit or requirements of this chapter.

SECTION 5. Tennessee Code Annotated, Section 8-44-106, is amended by adding the following as a new subsection thereto:

(e) If the plaintiff substantially prevails on any part of the claim against the governing body, or if the court finds evasive devices were used to deprive the public of information used in the process of making a decision, the court shall award reasonable attorneys' fees against the governing body,

SECTION 6. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-109.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws and how to remain in compliance with such laws. MTAS shall also develop such a program for members of local planning commissions created

by municipalities. CTAS shall also develop such a program for members of local planning commissions created by counties and regional planning commissions.

(b) The Tennessee school board association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The utility management review board shall develop a program for board members of water, wastewater and gas authorities created by private act or under the general law and of utility districts in order to educate such board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by § 7-86-302 shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

SECTION 7. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-110.

Nothing in this section requires that a governing body hold a meeting or any portion of a meeting in closed session, but executive sessions may be held for the following purposes:

(1) Any meeting or portion of a meeting of the state information systems council to discuss sensitive security threats to systems under its control, as outlined in § 4-3-5509;

(2) Any meeting or portion of a meeting of a governing body to discuss with legal counsel present any pending litigation to which the public body is a party or a pending controversy where a threat of litigation has been received or is

imminent. The specific litigation or threat must be disclosed before the body goes into executive session;

(3) Any meeting or portion of a meeting of a school board to hear an appeal of a student disciplinary matter as described in Chapter 212 of the Public Acts of 2007;

(4) Labor negotiation strategy sessions as outlined in § 8-44-201; or

(5) To discuss the consideration the governing body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property; provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract. If an executive session is utilized pursuant to this exception, in addition to the members of the governing body, only persons representing the interests of the governing body in the transaction may be present during the executive session. This real property discussion exception shall not apply if:

(A) Any member of the governing body involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property; or

(B) A condemnation action has been filed to acquire the real property involved in the discussion.

SECTION 8. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section thereto:

§ 8-44-111.

Meetings at which a quorum is present may be closed only when there is a lawful exception and where every member has been given adequate notice. Before any

meeting shall be closed, under this section or any other lawful exception, the following conditions shall apply:

(1) A quorum of the governing body shall convene in public. The presiding officer, or, in the case of attorney-client meetings, legal counsel shall cite or explain to the members and public assembled the specific legal authority for closing the meeting;

(2) Members of the governing body shall vote by roll call in the public portion of the meeting on whether the closing is necessary. A simple majority vote shall be required to go into executive session. The minutes of the public portion of the meeting shall reflect the names of those voting for and against the motion to go into executive session and include the specific legal exemption which permits the executive session;

(3) The presiding officer or counsel representing the governing body shall explain to the members of the governing body and any members of the public present that no other business shall be discussed during the closed session and that no votes shall be taken in closed session;

(4) The presiding officer shall announce during the public portion of the meeting the time when the body expects or plans to reconvene in public session to vote or further discuss the issue;

(5) Any meeting or portion of a meeting to be closed pursuant to the pending litigation or pending controversy exemption shall be conducted by the lawyer for the governing body who shall:

(A) Advise the members that the meeting is between the lawyer and the client;

(B) Explain that the meeting is being held for the sole purpose of relaying confidential client communication and legal advice regarding pending or anticipated litigation; and

(C) Explain that all comments from the members shall be directed to the lawyer. No discussions may occur between the members and no votes can be taken except in open session.

(6) Executive sessions shall be subject to the same public notice requirements as other meetings. If the executive session is scheduled as part of a regularly scheduled meeting, plans to go into executive session shall be noted on the agenda. If it is scheduled as a special meeting, the public notice for the meeting shall reasonably describe the subject matter for the executive session.

(7) Minutes of the executive session shall include the names of those in attendance, time, date, and place of the meeting and a general description of the discussion except for the specific detail that is subject to the exemption. Minutes shall be a public record except that specific confidential information may be withheld until the need for confidentiality no longer exists; and

(8) The presiding officer or legal counsel shall certify in the minutes that no other business was discussed in closed session.

SECTION 9. Tennessee Code Annotated, Section 8-44-103, is amended by deleting the section in its entirety and substituting instead the following:

§ 8-44-103

(a) Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided

by law, shall give adequate public notice of such meeting. Such notice shall be based on the totality of the circumstances as will fairly inform the public. The notice shall:

- (1) Be disseminated in a manner and location where members of the community affected can become aware of such notice;
- (2) Reasonably describe the purpose of the meeting; and
- (3) Be disseminated sufficiently in advance of the meeting to give citizens the opportunity to attend.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

(d) Proof of notice under this section shall be preserved and maintained for one (1) year within the office that administers or staffs the governing body and shall be open for public inspection and copying at all times during normal business hours.

SECTION 10. This act shall take effect July 1, 2008, the public welfare requiring it.